IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 616 of 2006(W)

PETITIONER:

RICHARD FLETCHER, S/O.JAMES FLETCHER,
AGED 62 YEARS, PLOT NO. 824, PANAMPILLY NAGAR,
COCHIN 36.

BY ADV. SRI.M.A.ABDUL HAKHIM
SRI.JYOTHISH.J.KALLINGAL

RESPONDENTS:

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1. TRIVANDRUM DEVELOPMENT AUTHORITY(TRIDA)
TRIVANDRUM REPRESENTED BY ITS SECRETARY.

2. THE SPECIAL TAHSILDAR L.A.(GENERAL),
THIRUVANANTHAPURAM.

FOR R1 ADV. SRI.K.A.JALEEL, SC., TRIDA
FOR R2 ADV.SRI D.ANILKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 616 of 2006(W)

APPENDIX

PETITIONER'S EXTS:

EXT.P1 A PHOTOSTATE COPY OF THE AWARD NOTICE DATED 20/10/2005 IN L.A.C NO.42/2005 AWARDING RS.7,01,649/-

EXT.P2 A PHOTOSTAT COPY OF THE REPRESENTATION DATED 08/11/2005 TO THE 2ND RESPONDENT SPECIFICALLY REQUESTING TO ACQUIRE ALL THE AFORESAID BUILDINGS SITUATED IN THE ABOVE SAID 37 SQ.METERS IN SY.NO.1019/A1-2, A1-3 WHOLLY AND FULLY.

EXT.P3 A PHOTOSTAT COPY OF THE LETTER DATED 25/10/2007 ISSUED BY THE 1ST RESPONDENT.

EXT.P4 A PHOTOSTAT COPY OF THE LETTER DATED 26/10/2007 ISSUED BY THE 2ND RESPONDENT.

\\TRUE COPY//

K.PADMANABHAN NAIR, J.

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W.P.(C).No.616 of 2006-W

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Dated this the 18th day of December, 2007

J U D G M E N T

The petitioner wants the Land Acquisition Officer to acquire the whole of the building though he is not prepared to file such an application. 37 sq. meter of land, the portion of a building situated in the land belonging to the petitioner was acquired for public purpose. The award was passed on 09/05/2005 as Ext.P1. The petitioner has filed this original petition for a direction to quash Ext.P1 and direct the Land Acquisition Officer to acquire whole of the shop building.

2. In view of the decision of the Full Bench in **Saramma Itticheriya and others v. State of Kerala and others [2007 (4) ILR 716]**, if a building is wholly to be demolished, the site wherein the same is situated is wholly to be acquired.

3. The petitioner does not part with the possession of the land but he want the Land Acquisition Officer to demolish the entire building, which is not possible in view of the principle laid down by the Full Bench. Since the award had already been passed, the request of the petitioner is not maintainable. So the writ petition is only to be dismissed.

4. It is submitted by the counsel for the petitioner that he was not yet paid the award amount till date. The learned Standing Counsel submits that the petitioner failed to produce the original title deed. Ext.P4, produced by the petitioner, shows that though an award was passed, the land is not yet taken possession and handed over to the requisitioning authority. It is also stated that the case will be referred to the court after taking possession of the land. It is submitted that the money will be deposited to the court after referring to the same.

5. Section 31 of the Kerala Land Acquisition Act deals with payment. Section 31(1) reads as follows:-

> "On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the

> persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section."

If the party produces document to prove his title, immediately after passing the award, the same Collector is bound to tender the amount to the owner of the land and possession of the same can be taken only thereafter.

6. The Rule 14 and 15 of the Kerala Land Acquisition Rules, deals with mode of payment of awards and taking possession of the land.

Rule 14(2) provides that:-

> "The payment relating to an award shall be made or the amount credited to Court or Revenue deposit within one month from the date of the award and in the case of an award made in the month of March. it shall be paid or deposited before the end of the financial year."

Rule 15(1) provides that:-

> "The payment or deposit of the amount awarded shall not be effected unless the land is taken possession of."

7. Thus, provisions contained in the Rules are against the provisions contained in Section 31 of the Act. If an award is passed and the party produces document to prove his title, the Collector is bound to tender the amount to the owner of the land but, in the case of deposit, he is given one month's time from the date of award and further, it is stated that the amount shall be deposited only after taking possession of the land.

8. I do not find any justification in making such a classification, i.e. a Land Acquisition Officer must either tender amount to the claimant or he shall deposit the same in the court and then take possession of the land.

9. Sri.K.A.Jaleel, the Standing Counsel for the Trivandrum Development Authority has submitted that if the Land Acquisition Officer has already fixed the compensation taking into account the value of the entire building, the same is to be redetermined and only a value for the portion to be demolished is to be awarded.

10. If the entire building is not acquired, the petitioners cannot claim compensation for the entire structure in which case the Land Acquisition Officer shall re-determine the compensation due to the petitioner for the land and building portion and pass a fresh award and give an opportunity to the petitioner to prove his title over the land and building portion. In case the petitioner produces the necessary document, the Land Acquisition Officer shall pass an award applying the provision contained in Section 31.

Writ petition is disposed of in the above terms.

Sd/-

K.PADMANABHAN NAIR,
Judge

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